

Joseph R. Saveri (State Bar No. 130064)
Lisa J. Leebove (State Bar No. 186705)
JOSEPH SAVERI LAW FIRM
255 California, Suite 450
San Francisco, California 94111
Telephone: 415.500.6800
Facsimile: 415.500.6803

Richard M. Heimann (State Bar No. 63607)
Kelly M. Dermody (State Bar No. 171716)
Eric B. Fastiff (State Bar No. 182260)
Brendan Glackin (State Bar No. 199643)
Dean Harvey (State Bar No. 250298)
Anne B. Shaver (State Bar No. 255928)
LIEFF CABRASER HEIMANN & BERNSTEIN, LLP
275 Battery Street, 29th Floor
San Francisco, California 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008

Interim Co-Lead Counsel for Plaintiffs and the Plaintiff Class

[Additional counsel listed on signature page]

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

IN RE: HIGH-TECH EMPLOYEE
ANTITRUST LITIGATION

THIS DOCUMENT RELATES TO:

ALL ACTIONS

Master Docket No. 11-CV-2509-LHK

**JOINT CASE MANAGEMENT
CONFERENCE STATEMENT**

Date: September 12, 2012
Time: 2:00 p.m.
Courtroom: 8, 4th Floor
Judge: The Honorable Lucy H. Koh

1 The parties submit this joint statement for the September 12, 2012 Case Management
2 Conference.

3 **I. Case Progress**

4 Since the June 4, 2012 Case Management Conference, the case has progressed as follows.

5 Counsel for Plaintiffs submitted a Notice of Compliance with the Court's June 5, 2012
6 Case Management Order on June 18, 2012. (Dkt. No. 153.) Counsel for Defendants also
7 submitted Declarations regarding their document productions on June 18, 2012. (Dkt. Nos. 154-
8 160.)

9 On June 15, 2012, the Court granted the parties' Stipulation regarding the submission of
10 amended Answers by Defendants. (Dkt. No. 152.) Defendants submitted their Amended
11 Answers on July 5, 2012. (Dkt. Nos. 168-174.)

12 On July 10, 2012 the Court entered the parties' stipulation, with modifications, amending
13 the case schedule, setting the deadline for Plaintiffs' motion for class certification for September
14 17, 2012, and setting the first day of trial in this action for August 27, 2013. (Dkt. No. 176.) The
15 Court subsequently amended the trial date to August 26, 2013. (Dkt. No. 177.)

16 **II. Discovery Progress**

17 In the June 5, 2012 Case Management Order, the Court referred all future discovery
18 disputes to Magistrate Judge Grewal. On August 22, 2012, Defendant Lucasfilm submitted
19 supplemental initial disclosures pursuant to Fed. R. Civ. P. 26 in which it identified one
20 additional witness who may have discoverable information, as well as a liability insurance policy.
21 Also, Google served supplemental initial disclosures on July 23, 2012.

22 There has been no further written discovery and there are no discovery matters presently
23 under submission to Magistrate Judge Grewal.

24 Plaintiffs have taken 30(b)(6) depositions regarding Defendants' data, and have taken five
25 depositions of percipient witnesses. Following the 30(b)(6) depositions, Plaintiffs followed up
26 with certain Defendants, seeking additional data. Defendants have largely completed
27 supplementing their data productions. Plaintiffs have noticed but have not yet taken the
28

1 deposition of one more percipient witness, and have begun the process of scheduling and noticing
 2 the depositions of additional percipient witnesses, some of whom Plaintiffs have learned are
 3 former employees.

4 Defendants have noticed the depositions of the five Named Plaintiffs, and they are
 5 scheduled to occur between September 28, 2012 and October 15, 2012.

6 To date, Defendants have also served, or are in the process of serving, 30 subpoenas on
 7 the current and former employers of the individual and representative Plaintiffs.

8 **A. Plaintiffs' Statement**

9 The parties are engaged in discovery and understand document production to be
 10 substantially complete.

- 11 • Plaintiffs supplemented their production on June 5, 2012 (72 pages of documents);
 12 June 8, 2012 (6,631 pages of documents); June 15, 2012 (18,273 pages of
 13 documents); and July 16, 2012 (3 pages of documents).¹
- 14 • Defendant Adobe supplemented its production on June 7, 2012 (user guides data);
 15 June 15, 2012 (34,628 pages of documents); June 19, 2012 (compensation data) ;
 16 June 29, 2012 (leaving/exit survey data); July 9, 2012 (380 pages of documents);
 17 July 11, 2012 (education data); July 16, 2012 (3,822 pages of documents); July 26,
 18 2012 (overtime data); August 2, 2012 (924 pages of documents); August 6, 2012
 19 (corrected overtime data); and August 29, 2012 (compensation data).
- 20 • Defendant Apple supplemented its production on June 8, 2012 (raw data from
 21 Apple's third-party Virtual Edge database); June 15, 2012 (75,847 pages of
 22 documents); June 16, 2012 (3,434 pages of documents); June 22, 2012 (76 pages
 23 of documents); June 29, 2012 (compensation data); July 18, 2012 (3,103 pages of
 24 documents); and September 5, 2012 (sourcing data).
- 25 • Defendant Google supplemented its production on June 15, 2012 (compensation
 26 data and 124,723 pages of documents); June 18, 2012 (577 pages of documents);

27 ¹ Plaintiffs' July 16 production consisted of three pages that Plaintiffs' counsel determined were
 28 not privileged.

July 13, 2012 (data reports); and July 14, 2012 (personnel data and 62 pages of documents).

- Defendant Intel supplemented its production of documents on June 8, 2012 (compensation data and 24 pages of documents); June 14, 2012 (recruiting data); June 15, 2012 (10,201 pages of documents); June 25, 2012 (1,787 pages of documents); June 26, 2012 (1,787 text file documents); July 6, 2012 (45,066 pages of documents); and August 2, 2012 (compensation data).
- Defendant Intuit supplemented its production on June 14, 2012 (compensation data); June 15, 2012 (23,797 pages of documents); June 29, 2012 (119 pages of documents); July 12, 2012 (compensation data); July 16, 2012 (3,150 pages of documents); August 16, 2012 (231 pages of documents); August 21, 2012 (compensation data); and August 29, 2012 (33 pages of documents).
- Defendant Lucasfilm supplemented its production on June 8, 2012 (58,145 pages of documents); June 13, 2012 (compensation data); June 15, 2012 (84,265 pages of documents); June 29, 2012 (6,271 pages of documents); July 16, 2012 (263 pages of documents); August 22, 2012 (61 pages of documents); and September 5 (recruiting data).
- Defendant Pixar supplemented its production on June 11, 2012 (12,562 pages of documents); June 15, 2012 (compensation data and 21,812 pages of documents); June 27, 2012 (1,098 pages of documents); July 9, 2012 (901 pages of documents); July 16, 2012 (1,163 pages of documents); July 20, 2012 (318 pages of documents); July 26, 2012 (1 page of documents); and July 31, 2012 (video files).

While production is substantially complete, Plaintiffs anticipate receiving an additional production of data from Defendant Apple.²

² At the deposition of Apple's Rule 30(b)(6) witness Shawna Dougherty on July 12, 2012, Plaintiffs' counsel learned for the first time that Apple makes use of a third-party Avature database, and that this database contains sourcing data for passive employment candidates. Plaintiffs' counsel immediately requested production of this database that had never been previously disclosed. Today, Plaintiffs received the first installment of this data. Apple's counsel represented that the remaining data will be produced by the end of the week. Below, Apple

1 **B. Defendants' Statement**

2 The parties produced a substantial number of documents in compliance with the June 15,
3 2012 deadline for substantial completion of document productions. Plaintiffs produced a total of
4 approximately 8,390 documents on or before June 15, and supplemented that production with
5 three pages of documents thereafter. Defendants collectively produced a total of approximately
6 160,400 documents on or before June 15, and supplemented those productions with
7 approximately 17,300 documents thereafter, which was largely the result of Defendants'
8 respective privilege reviews.³

9 **III. Trial Date**

10 In the last Case Management Conference statement, Plaintiffs requested a later trial date
11 in this action due to a conflicting trial date in another federal antitrust matter in which half of
12 Plaintiffs' counsel here are involved. The conflicting case is *In re Titanium Dioxide Antitrust*
13 *Litigation*, Master Docket No.1:10-cv-00318-RDB (D. Md.), proceeding before Judge Richard D.
14 Bennett in the United States District Court for the District of Maryland. Trial in Titanium
15 Dioxide is set to begin on September 9, 2013 and last through October 4, 2013.

16 Judge Bennett first set this schedule in an Order dated June 3, 2011. *Titanium Dioxide*,
17 Dkt. 141. There has been no further revision to the trial date.

18 On August 17, 2012, Judge Bennett issued a new Case Schedule Order confirming the
19 same trial dates. *Id.* at Dkt. 330.

20 _____
21 asserts that the data is nonresponsive and "falls outside the class period." The data concerns the
22 "sourcing," or recruiting, of employee candidates. The data appears to be directly responsive to
23 the categories of recruiting and cold-calling data Defendants agreed to finish producing months
24 ago. Regarding the "class period": Defendants agreed to produce responsive data created through
February 1, 2012. The data at issue covers the critical period of 2009 through the start of 2012.
Apple should have produced this data months earlier, and Plaintiffs would not have learned of its
existence but for a 30(b)(6) deposition Apple substantially delayed. Plaintiffs noticed one
30(b)(6) deposition regarding Apple's data.

25 Apple has explained to Plaintiffs that the data in its third-party Avature database is not
26 responsive to any of Plaintiffs' prior data requests. Additionally, only a very small number of
27 records are from the class period, and those are from the very end of 2009. Virtually all of the
28 data in the database (99.5%) falls outside the class period. Nevertheless, Apple agreed to work
with the third party that maintains the database to produce the data. It produced 13 data files on
September 5, 2012, and one additional file will be produced as soon as personal identifying
information is redacted. At Plaintiffs' request, Apple has produced three witnesses for 30(b)(6)
depositions regarding its data.

On August 28, 2012, Judge Bennett certified *Titanium Dioxide* as a class action. *Id.* at Dkt. 338. Lieff, Cabraser, Heimann & Bernstein, LLP and the Joseph Saveri Law Firm were appointed Co-Lead Class Counsel (along with Gold Bennett Cera & Sidener LLP). Eric L. Cramer of Berger & Montague, P.C. and Linda Nussbaum of Grant & Eisenhofer, P.A. were previously appointed as members of the Plaintiffs' Executive Committee.

Joseph R. Saveri of Joseph Saveri Law Firm, who serves as Interim Co-Lead Counsel in this action, has also been appointed Co-Lead Class Counsel in *Titanium Dioxide*, and therefore is now scheduled to appear simultaneously in two separate actions before federal courts on opposite sides of the country. Other attorneys presently working as, or closely with, Interim Co-Lead Class Counsel in the instant action and as, or closely with, Co-Lead Class Counsel in *Titanium Dioxide* include members of Berger & Montague, PC; Grant & Eisenhofer P.A.; Joseph Saveri Law Firm; and Lieff, Cabraser, Heimann & Bernstein, LLP.

To eliminate this conflict, Interim Co-Lead Class Counsel respectfully request that this Court revise its latest Scheduling Order, Dkt. 176, to set jury trial to begin any date on or after November 11, 2013 convenient for both the Court and Defendants.

Defendants do not oppose Plaintiffs' request to postpone the trial date, on the condition that no other deadlines change.

Dated: September 5, 2012 JOSEPH SAVERI LAW FIRM

By: /s/ Joseph R. Saveri
Joseph R. Saveri

Joseph R. Saveri (State Bar No. 130064)

255 California, Suite 450
San Francisco, California 94111
Telephone: 415.500.6800
Facsimile: 415.500.6803

Proposed Interim Co-Lead Counsel for Plaintiff Class

1 Dated: September 5, 2012

LIEFF, CABRASER, HEIMANN & BERNSTEIN, LLP

2
3 By: /s/ Kelly M. Dermody
Kelly M. Dermody

4 Richard M. Heimann (State Bar No. 63607)
5 Kelly M. Dermody (State Bar No. 171716)
6 Eric B. Fastiff (State Bar No. 182260)
7 Brendan Glackin (State Bar No. 199643)
8 Dean Harvey (State Bar No. 250298)
9 Anne B. Shaver (State Bar No. 255928)
275 Battery Street, 29th Floor
San Francisco, California 94111-3339
Telephone: 415.956.1000
Facsimile: 415.956.1008

Proposed Interim Co-Lead Counsel for Plaintiff Class

10 Dated: September 5, 2012

O'MELVENY & MYERS LLP

11
12 By: /s/ Michael F. Tubach
13 Michael F. Tubach

14 George Riley
15 Michael F. Tubach
16 Lisa Chen
17 Christina J. Brown
Two Embarcadero Center, 28th Floor
San Francisco, CA 94111
Telephone: (415) 984-8700
Facsimile: (415) 984-8701

Attorneys for Defendant APPLE INC.

18
19 Dated: September 5, 2012

KEKER & VAN NEST LLP

20
21 By: /s/ Daniel Purcell
Daniel Purcell

22 John W. Keker
23 Daniel Purcell
24 Eugene M. Page
25 Paula L. Blizzard
26 Cody S. Harris
633 Battery Street
San Francisco, CA 94111
Telephone: (415) 381-5400
Facsimile: (415) 397-7188

Attorneys for Defendant LUCASFILM LTD.

1 Dated: September 5, 2012 JONES DAY

2
3 By: /s/ David C. Kiernan
David C. Kiernan

4 Robert A. Mittelstaedt
5 Craig A. Waldman
6 David C. Kiernan
7 555 California Street, 26th Floor
8 San Francisco, CA 94104
9 Telephone: (415) 626-3939
10 Facsimile: (415) 875-5700

11 *Attorneys for Defendant ADOBE SYSTEMS, INC.*

12 Dated: September 5, 2012 JONES DAY

13 By: /s/ Robert A. Mittelstaedt
Robert A. Mittelstaedt

14 Robert A. Mittelstaedt
15 Catherine T. Zeng
16 Craig E. Stewart
17 555 California Street, 26th Floor
18 San Francisco, CA 94104
19 Telephone: (415) 626-3939
20 Facsimile: (415) 875-5700

21 *Attorneys for Defendant INTUIT INC.*

22 Dated: September 5, 2012 MAYER BROWN LLP

23 By: /s/ Lee H. Rubin
Lee H. Rubin

24 Lee H. Rubin
25 Edward D. Johnson
26 Donald M. Falk
27 Two Palo Alto Square
28 3000 El Camino Real, Suite 300
Palo Alto, CA 94306-2112
Telephone: (650) 331-2057
Facsimile: (650) 331-4557

Attorneys for Defendant GOOGLE INC.

1 Dated: September 5, 2012 BINGHAM McCUTCHEN LLP

2
3 By: /s/ Frank M. Hinman
Frank M. Hinman

4 Donn P. Pickett
5 Frank M. Hinman
6 Three Embarcadero Center
7 San Francisco, CA 94111
Telephone: (415) 393-2000
Facsimile: (415) 383-2286

8 *Attorneys for Defendant INTEL CORPORATION*

9 Dated: June 1, 2012 COVINGTON & BURLING LLP

10 By: /s/ Emily Johnson Henn
11 Emily Johnson Henn

12 Robert T. Haslam, III
13 Emily Johnson Henn
14 333 Twin Dolphin Drive, Suite 700
Redwood City, CA 94065
Telephone: (650) 632-4700

15 *Attorneys for Defendant PIXAR*

16 **ATTESTATION:** Pursuant to General Order 45, Part X-B, the filer attests that concurrence in
17 the filing of this document has been obtained from all signatories.